

Amend Section 42-701.2(l) to read:

42-701 INTRODUCTION TO WELFARE-TO-WORK

42-701

.2 Definitions for Terms Used in This Chapter (Continued)

(l) (Continued)

- (2) “Learning Disabilities” means a heterogeneous group of disorders manifested by significant difficulties in the acquisition and use of listening, speaking, reading, writing, reasoning, or mathematical abilities.

These disorders are intrinsic to the individual and presumed to be due to central nervous system dysfunction. Even though a learning disability may occur together with other handicapping conditions (e.g., sensory or mental impairment); or environmental retardation, social and/or emotional disturbance influences (e.g., cultural differences, insufficient/inappropriate instruction, psychogenic factors); it is not the direct result of those conditions or influences.

For the purposes of the CalWORKs Welfare-to-Work program, these disorders interfere with the participant’s ability to obtain or retain employment or to participate in welfare-to-work activities.

Authority Cited: Sections 10531, 10553, and 10554, Welfare and Institutions Code.

Reference: Section 8172, Education Code; Sections 10063, 10800, 11320, 11320.3(b)(3)(A), 11322.6, 11322.9, 11324.6, 11324.8, 11325.21, 11325.25, 11331.5, 11495, 11495.1, 11495.12, and 13280, Welfare and Institutions Code; and Sections 15365.50 and 15365.55, Government Code; and 42 U.S.C. 603(A)(5).

Adopt new Section 42-722 to read:

42-722      LEARNING DISABILITIES PROTOCOLS AND STANDARDS

42-722

.1      CalWORKs Welfare-to-Work Learning Disabilities Screening Requirements

.11      Counties must offer CalWORKs welfare-to-work participants a screening for learning disabilities at the first welfare-to-work contact (i.e., orientation or appraisal) or by no later than the assessment as described in Section 42-711.55.

.111    The offer of the screening and evaluation must be both verbal and in writing.

.12      Counties are required to provide information about the screening, both verbally and in writing at the first welfare-to-work contact, including a description, of the purpose and benefits of the screening and evaluation.

.121    Information that counties provide participants must include, but is not limited to, the following:

- (a)    Most people with learning disabilities are intelligent and many are gifted;
- (b)    Individuals with a learning disability may have difficulty reading, listening, understanding directions, writing, spelling, doing math, organizing things, getting along with others, expressing ideas out loud, paying attention;
- (c)    Individuals with a learning disability can be taught to use their strengths and find ways to make it easier to learn and be more successful at school and on the job;
- (d)    The county can help individuals get the appropriate welfare-to-work activity, including accommodations once a learning disability is identified;
- (e)    The learning disabilities screening is a very simple and short test;
- (f)    The screening will help the individual decide if they want a referral to a learning disability specialist for an evaluation to find out if a learning disability exists;
- (g)    The areas that will be tested at evaluation are natural talents and abilities, ability to follow verbal and written information, achievement, and job and career interests. The specialist can help identify strengths and weaknesses so that the county can make referrals to the appropriate services and accommodations; and

- (h) Individuals have the right to file for a fair hearing pursuant to Section 42-721.5 if they disagree with a county action.
          - (i) Limited-English proficient CalWORKs welfare-to-work participants have the right to request a referral to a learning disabilities evaluation, pursuant to Section 42-722.414, when there is no screening tool in their primary language.
  - .13 Counties that choose to offer a screening for learning disabilities later than the first welfare-to-work contact are still required to provide information about the screening and evaluation, as specified in Section 42-722.12, at the first welfare-to-work contact.
  - .14 Participants who request or agree to a learning disabilities screening at any time during their welfare-to-work participation must be screened by the county before they are assigned to another welfare-to-work activity.
    - .141 This provision applies only to participants who have not been previously screened.
    - .142 Participants in welfare-to-work activities shall have good cause for not participating if their assigned activities, when their screening appointment conflicts with their activity.
  - .15 For limited-English proficient CalWORKs welfare-to-work participants for whom no recognized and validated learning disabilities screening tools exist, as required by Section 42-722.32, the county must determine whether a potential learning disability exists.

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- .151 Counties may use discussions with, and observation of, the participant to determine the existence of a potential learning disability.
  - (a) Discussions with the limited-English proficient participant may include, but are not limited to:
    - (1) The participant's ability to follow instructions both verbally and in writing;
    - (2) Learning difficulty in his/her native language while growing up as compared to other children; and
    - (3) Subject areas that were easy for the participant to learn and conversely, subject areas that were difficult to learn.

- (b) Observation of the participant could include comparison of the participant's work habits and/or classroom ability to their peer group.

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- .152 For the purposes of Section 42-722.15, the county shall determine whether limited-English proficient CalWORKs welfare-to-work participants may have a learning disability within the time frames cited in Section 42-722.11.
- .153 If the county determines that a limited-English proficient CalWORKs welfare-to-work participants may have a potential learning disability, the county must refer the participant to a learning disabilities evaluation in accordance with Section 42-722.4.
- .16 If during the learning disabilities screening and evaluation process, the county suspects that the participant has health, behavioral health, and learning disabilities problems, counties should address the health-related issues first.
- .161 Participants referred to health-related evaluations prior to a learning disabilities screening and/or evaluation shall not be required to sign a waiver, in accordance with Section 42-722.213, until the health-related issues are identified and addressed and the participant subsequently declines the screening and/or evaluation.
- .2 Participants who decline the learning disabilities screening/evaluation
- .21 When the participant declines the learning disabilities screening referenced in Section 42-722.1 and/or the evaluation referenced in Section 42-722.4, the county must:
- .211 Inform the participant that his/her welfare-to-work activities will not include any accommodations for a learning disability; and
- .212 Inform the participant that he/she may receive a learning disabilities screening and/or evaluation upon request at any later time; and
- .213 Read and discuss the waiver of the learning disabilities screening and/or evaluation with the participant and have the participant sign the waiver.
- (a) A participants' refusal to sign the waiver is equivalent to a signed waiver when documented by the county in the case file.
- .22 The county must not sanction a participant because of his/her refusal to be screened and/or evaluated for learning disabilities.
- .221 Should a participant decline to be screened or evaluated, and subsequently refuse or fail to comply with program requirements, or to make satisfactory

progress in his/her assigned activity, the participant shall not have good cause on the basis of being learning disabled for failing to comply with program requirements or make satisfactory progress, and shall be subject to the compliance and sanction requirements in accordance with Sections 42-721.2 and .4, respectively, unless determined to have a learning disability.

.23 Should the participant decline the learning disabilities screening and/or evaluation as described in Section 42-722.21, and request a learning disabilities screening and/or evaluation at a later time, the county must provide the screening and evaluation as soon as administratively possible.

.231 If the evaluation identifies the existence of a learning disability, the welfare-to-work assignment and/or welfare-to-work plan, as necessary, will be modified to provide appropriate services and accommodations to address the learning disability on a prospective basis only.

.24 Should the participant provide previous evaluation results that were conducted outside of the CalWORKs Welfare-to-Work program, the county has the option to:

.241 Accept all or part of the evaluation and provide the individual with any needed reasonable accommodations that are identified in the evaluation; or

.242 Not accept the evaluation and obtain a second opinion by referring the participant to another learning disabilities evaluation.

.243 In cases when previous evaluations do not provide sufficient information, refer the participant to additional testing.

.25 If the participant's previous evaluation is determined acceptable by the county, the participant shall not be required to sign the learning disability screening and evaluation waiver.

.26 A county must, at a minimum, verbally inform participants that it is accepting or rejecting all or part of a previous learning disabilities evaluation.

.27 If the participant meets the criteria in Sections 42-722.412 and .414, and is directly referred to an evaluation without going through the screening process, the participant shall not be required to sign a waiver.

### .3 Providing Learning Disabilities Screening

.31 The county may choose who will administer the learning disabilities screening tool.

.311 Counties must select screeners for potential learning disabilities who have:

(a) The training to appropriately administer the screening tool; and

- (b) To the degree possible, a working relationship with the participant (e.g., county employment case managers, social workers, and eligibility workers; and contracted service providers, etc.).

.312 Counties may contract with trained, qualified learning disabilities professionals to administer the screening tool.

.32 Counties must use only recognized and validated learning disabilities screening tools, if a validated tool exists in the participant's primary language.

.33 Counties must use bilingual and bicultural staff when determining whether a limited-English proficient individual has a potential learning disability.

#### .4 Referral Process for Disabilities Evaluation

.41 In accordance with Section 42-711.58, counties must refer CalWORKs participants who are suspected of having a learning disability for a learning disabilities evaluation. These participants include, but are not limited to, individuals who:

.411 Have been identified as potentially having a learning disability, based on the learning disabilities screening tool score;

.412 Were previously identified as having learning problems (e.g., in Special Education classes in grades kindergarten through 12); or

.413 Are suspected of having a learning disability, even though the results from the learning disabilities screening did not indicate a potential learning disability.

.414 Are limited-English proficient and request a referral to a learning disabilities evaluation if no validated screening tool exists in their primary language.

.42 If a participant declines the learning disabilities evaluation, the county must inform the participant of how his/her welfare-to-work assignment will be affected as provided in Section 42-722.21.

.43 If a participant agrees to an evaluation, the county must refer him/her to the evaluation as soon as administratively possible.

.44 Participants who are screened at the assessment, described in Section 42-711.55, and are found to have a potential learning disability and have agreed to an evaluation, must be evaluated prior to the completion of the assessment and the welfare-to-work plan.

.441 If the individual initially agrees to an evaluation but fails to attend evaluation without good cause, he/she will be deemed to have declined the evaluation and the assessment process will resume without benefit of the evaluation. The individual shall not be sanctioned as described in Section 42-722.22 for failure

to attend the evaluation and shall be able to request a screening and/or evaluation at a later time as described in Section 42-722.23.

- .45 Participants in welfare-to-work activities shall have good cause for not participating if their assigned activities, when their evaluation appointment conflicts with their activity.
- .46 Counties must use trained, qualified learning disabilities evaluation professionals who use recognized and validated learning disabilities evaluation tools to identify learning disabilities and to determine the appropriate accommodations for individuals with learning disabilities.
- .461 Learning disabilities evaluation professionals may include county staff who have the necessary training as learning disabilities specialists to administer and interpret validated test instruments.
- .462 The county may contract with qualified learning disabilities evaluation professionals to perform the evaluations.

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- .463 Learning disabilities evaluation professionals with whom the county may contract include, but are not limited to, qualified individuals from the following sources:
- (a) Professional private/corporate contractors or providers;
  - (b) Trained and qualified staff at community/state colleges or universities;
  - (c) Trained and qualified staff from community-based organizations that serve individuals with learning disabilities;
  - (d) Trained and qualified staff from adult educational facilities, or
  - (e) Staff from the Department of Rehabilitation.
- .464 Basic evaluation test instruments that learning disabilities evaluators may use but are not limited to the following areas:
- (a) Aptitudes/information processing, e.g., Wechsler Adult Intelligence Scale (WAIS), Woodcock-Johnson;
  - (b) Achievement, e.g., Wide Range Achievement Test (WRAT 3), Test of Adult Basic Education (TABE), Nelson-Denny (reading); and

- (c) Vocational interest, as needed, to assist in the development of the welfare-to-work plan.

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.465 If no recognized and validated evaluation tools exist in the participant's primary language, the learning disabilities evaluation professional, utilizing appropriate bilingual and/or bicultural staff, as necessary, must to the best of staff ability determine if a learning disability exists through:

- (a) The use of other evaluation tools that may provide pertinent information.
- (b) Discussions appropriately tailored to the individual's cultural background with, and/or observations of, the participant; and/or

.466 If a county staff person, service provider, learning disabilities professional, or the participant suspects that the participant suffers from another impairment that may be a barrier to participation (i.e., a health or behavioral health problem), in addition to or instead of a learning disability, the county also shall refer the participant to a professional who is licensed to diagnose that impairment in accordance with Section 42-722.16.

#### .5 Learning Disabilities Evaluation Report

.51 The learning disabilities evaluation report, at a minimum, shall include the following core information:

.511 Relevant vocational/educational background and history;

.512 General aptitude/cognitive level;

.513 Other issues, such as, physical/mental problems;

.514 Areas of strength;

.515 Areas of deficiency; and

.516 A summary of the participant's condition and service needs including:

- (a) severity of disability;
- (b) areas of potential impact, including employment and participation in welfare-to-work activities;
- (c) rationale for learning disabilities determination/diagnosis;
- (d) recommendations for additional services, as appropriate;

- (e) if identified, any suspected conditions other than a learning disability so that the county can make the appropriate referral; and
- (f) Range of recommended accommodations/assistive technology to be included in the participant's welfare-to-work plan.

.52 The learning disabilities evaluation report may include, but is not limited to, the following optional information:

.521 Identification of local resources to assist recipients;

.522 Documentation of accommodation/assistive technology needs for other purposes (e.g., driver's license exam, GED exam); and

.523 Discussion of participant's short/long-term employment goals and general/specific vocational recommendations to the extent that the evaluator is qualified to address these issues.

- (a) If the learning disabilities evaluation report does not include a written discussion of the participant's short/long-term employment goals and general/specific vocational recommendations, the county will need to ensure that these issues are addressed in the assessment process as described in Section 42-711.55 in consultation with the learning disabilities evaluator, as necessary.

.53 County Response to the Learning Disabilities Evaluation Report

.531 If the learning disabilities evaluation report establishes that the participant does not have a learning disability or other disability that interferes with obtaining or retaining employment or participating in the CalWORKs program:

- (a) The county must provide a copy of the report and an explanation of the evaluation results to the participant;
- (b) The participant must begin/resume his/her welfare-to-work assignment;
- (c) The county must inform the participant that he/she will not be provided special accommodations while participating in his/her welfare-to-work assignment, since it was determined that he/she did not have a learning disability; and
- (d) Inform the participant of the right to file for a state hearing if the participant disagrees with the county actions based on the evaluation, in accordance with Section 42-721.51.

.532 If the learning disabilities evaluation report establishes that the participant has a learning disability that interferes with obtaining or retaining employment or participating in a CalWORKs program, the county must:

- (a) Provide a copy and an explanation of the evaluation report results to the participant, including any recommendations for reasonable accommodations identified in the evaluation;
- (b) Discuss the appropriate welfare-to-work activities and reasonable accommodations needed to help the participant be successful in completing his/her welfare-to-work activities; and
- (c) As necessary, develop or modify the welfare-to-work activities and/or welfare-to-work plan in accordance with Section 42-711.63 to reflect appropriate welfare-to-work activities and necessary reasonable accommodations based on the results of the assessment, the learning disabilities evaluation, and discussions between the county and the participant.
- (d) Inform the participant of the right to file for a state hearing if the participant disagrees with the county actions based on the evaluation, in accordance with Section 42-721.51.

.54 Counties must treat participants' medical records and written learning disabilities evaluations as confidential documents that should only be shared with other counties, other learning disabilities evaluators, outside agencies, and welfare-to-work partner agencies on a "need-to-know" basis.

.541 Counties must obtain the participant's written consent to share this information with individuals or organizations outside of the county welfare department.

## .6 Learning Disabilities Participation Requirements

.61 Unless exempt pursuant to Section 42-712, an individual with a learning disability must participate for the required number of hours as specified in Sections 42-711.41 or .42.

.611 For the purposes of Section 42-722.61, required hours may include participation in supplemental activities that are supportive of the participant's employment goals and consistent with the learning disabilities evaluation and welfare-to-work plan.

- (a) These activities may include, but are not limited to, adult basic education, literacy tutoring, and, if allowable under the county's CalWORKs plan or as a reasonable accommodation, study time for participants who are in educational programs that are not self-initiated.

.7 Identifying Participants With Learning Disabilities During Good Cause Determination, Compliance Process and/ or Stopping of a Welfare-to-Work Sanction

- .71 If a learning disability is confirmed through an evaluation during a participant's good cause determination or compliance process, the county must determine if the disability contributed to the participant's failure to participate.
- .72 If it is determined that the learning disability diminished the participant's ability to participate:
- .721 The participant shall be considered to have good cause for his/her failure to participate in accordance with Section 42-713 or, if appropriate, be exempt from welfare-to-work requirements in accordance with Section 42-712;
- .722 The participant shall not be considered to have an instance of noncompliance in accordance with Section 42-721.43; and
- .723 As necessary, the county shall also review the welfare-to-work activity and/or welfare-to-work plan and modify it in accordance with Section 42-722.532(c).
- .73 If a learning disability is confirmed through an evaluation for an individual who is attempting to stop his/her welfare-to-work sanction, the county will determine whether the learning disability was a contributing factor to his/her noncompliance.
- .731 If the learning disability was a contributing factor to the individual's noncompliance:
- (a) The county will rescind the sanction and the participant shall not be considered to have an instance of noncompliance in accordance with Section 42-721.43; and
- (b) The county will give the individual the choice of:
- (1) receiving retroactive cash aid payments for the months the individual was improperly sanctioned; or
- (2) prospectively resuming receipt of cash aid and welfare-to-work services, effective the date the participant is determined to be no longer sanctioned.
- (c) If the individual chooses to receive aid for the rescinded sanction period, in accordance with Section 42-722.731(b)(1), all months in that period will be counted against the 60-month time limits, but not against the 18- or 24-month clock, in accordance with Section 42-722.8.

- (d) As necessary, the county will review the welfare-to-work activity and/or welfare-to-work plan and modify it in accordance with Sections 42-722.532(c).

.74 If the county cannot determine from the evaluation report if the disability contributed to the participant's failure to participate, the county must consult with the learning disabilities evaluator or another learning disabilities specialist to make the determination.

.75 If the learning disability was not a contributing factor to noncompliance, the county shall continue the sanctioning process in accordance with Section 42-721.4.

.8 Retrospective Adjustment of the 18- and 24-Month Time Clock

.81 Counties must retrospectively adjust an individual's 18- or 24-month time clock when the participant meets all of the following criteria:

.811 Has a verified learning disability;

and

.812 One of the following:

(a) Was not screened and evaluated for learning disabilities before signing the welfare-to-work plan; or

(b) Was screened by the county, evaluated, and found to have a learning disability;

and

.813 Both of the following:

(a) Signed a welfare-to-work plan; and

(b) Participated in welfare-to-work activities, but without appropriate accommodations for his/her learning disabilities;

and

.814 Did not make satisfactory progress in welfare-to-work activities.

.82 When a participant meets the criteria in Section 42-722.81, the county will do the following:

.821 Credit back one full month to the 18- or 24-month time clock for every partial or full month that the individual participated in welfare-to-work activities

without appropriate accommodations and did not make satisfactory progress in his or her welfare-to-work activities;

.822 Provide him/her with written notice of the number of months credited back to his/her 18- or 24-month welfare-to-work time clock, the number of months remaining on his/her 18- or 24-month time clock, and the reason for the adjustment; and

.823 Amend his/her welfare-to-work plan to include appropriate welfare-to-work activities, services and/or accommodations.

.83 Participants who refuse to be screened, evaluated, or accommodated are not eligible on the basis of a learning disability for an adjustment of their 18- or 24-month time clocks.

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.84 Existing CalWORKs policies governing the 60-month time limit are unaffected by the retrospective adjustment of the 18- or 24-month time clock, pursuant to Sections 42-722.82 and .83.

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.85 If a welfare-to-work participant with an identified learning disability moves from one county to another:

.851 The first county must, with the participant's written permission, forward a copy of the written learning disabilities evaluation to the second county.

.852 The second county must develop a new, or modify the existing, welfare-to-work plan, as necessary, to reflect appropriate welfare-to-work activities and necessary reasonable accommodations based on the review of documents received, reevaluation of the original assessment, discussions between the county and the participant, and availability of resources.

.853 The participant shall not have good cause for failure to participate in the second county, based on the second county's failure to provide services and accommodations that are identified in the learning disabilities evaluation report as being necessary for the participant, when the participant refuses permission for the first county to forward the report.

Authority Cited: Section 10553, Welfare and Institutions Code.

Reference: Sections 10850, 11320.3(f), 11322.8, 11325.2(a), 11325.25, 11325.4, 11325.5, 11327.4, 11327.5, and 11454(a) and (b), Welfare and Institutions Code.